

BILL ANALYSIS

H.B. 2246
By: Wray
Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

As part of its ongoing review of Texas law, the Real Estate, Probate, and Trust Law Section of the State Bar of Texas has proposed changes to certain provisions of the Texas Trust Code to avoid a trust being created with no true fiduciary. H.B. 2246 seeks to implement these proposed changes by specifying the fiduciary status of a directed trust advisor as regards the exercise of certain powers.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 2246 amends the Property Code to establish that an advisor of a directed trust is a fiduciary regardless of trust terms to the contrary, except that the bill establishes that trust terms may provide that an advisor acts in a nonfiduciary capacity if the advisor's only power is to remove and appoint trustees, advisors, trust committee members, or other protectors and the advisor does not exercise that power to appoint the advisor's self to such a position. This provision does not prohibit the exercise of a power in a nonfiduciary capacity as required by the federal Internal Revenue Code for a grantor or other person to be treated as the owner of any portion of the trust for federal income tax purposes.

EFFECTIVE DATE

September 1, 2019.